

Editor's note: Erratum issued on Aug. 7, 1980 -- See 48 IBLA 205A and B below.

LOWELL BECKER
BILLIE PETERSON

IBLA 80-363

Decided June 16, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring the Saturday 28 mining claim abandoned and void. OR MC 31662.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment--Mining
Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner or owners of an unpatented mining claim located on or before Oct. 21, 1976, must file a copy of the official notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979. Failure to file will conclusively be deemed an abandonment of the claim and it shall be void.

APPEARANCES: Lowell Becker and Billie Peterson, Salem, Oregon, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lowell Becker and Billie Peterson have appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), rendered December 19, 1979, rejecting recordation filing for the Saturday 28 mining claim. The decision, in part, recites:

Since your filing did not meet minimum statutory requirements for recordation of the claim with the Bureau of Land Management on or before October 22, 1979, the claim is deemed abandoned and void as provided in Section 314(c) of the Act [Federal Land Policy and Management Act

of 1976, 43 U.S.C. § 1744(c) (1976)], and section 3833.4 of the Regulations [43 CFR 3833.4].

Assuming that a discovery of valuable minerals exists on the voided claim and that the lands are open to mining, you may relocate the claim. However, a new location will be subject to prior rights of third parties or the United States.

Appellants, on January 19, 1980, filed a notice of appeal.

The Saturday 28 mining claim located in Josephine County, Oregon (NW 1/4 of sec. 14 and SW 1/4 of sec. 11, originally known as the L.T.D. #3), had initially been acquired by quitclaim deed granted to Lowe Becker, May 22, 1979, by Howard Gates. This quitclaim deed was later amended to include Billie Peterson.

Appellants, on October 19, 1979, filed with the BLM Oregon State Office, a letter, the quitclaim deed, and \$5 service fee for recordation the claim. The requirements for recordation of a mining claim are, in relevant part, as follows:

(b) The owner of an unpatented lode or placer mining claim * * * located prior to the date of approval of this Act shall, within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim * * * sufficient to locate that claimed lands on the ground.

(FLPMA, 43 U.S.C. s 1744(b) (1976)).

It is clear that neither Howard Gates (during time of his ownership) nor appellants followed correct procedures to record their claim. A quitclaim deed to a claim in itself is not a notice of location of that claim.

Appellants also state, somewhat enigmatically in their notice of appeal addressed to BLM:

This information is in your files which we stated when this was sent to you. After Mr. Howard Coates had been in your office prior to the filing date, it was explained to him that since we had recorded all of what you requested, what we sent to your office would be sufficient.

* * * * *

Also, we have re-recorded a notice of location of Placer Claim which is exactly the same as we already had prior to your not accepting it.

The record includes a BLM memorandum commenting on this statement, which concludes, 'Our search did not reveal a prior filing of the claim.' It is unclear from the second statement quoted above whether appellants have simply attempted to rerecord the original notice of location for the Saturday 28 claim, or whether they have relocated the claim on the same ground, as the BLM decision indicated they might do. ^{1/} In any event, the attempted recordation of the location which is the subject of this appeal was properly rejected by BLM in the absence of proof that a prior proper tender of the notice or certificate of location with the filing fee was made prior to October 22, 1979.

Under the terms of section 314(c) Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4, failure to file the necessary instrument must conclusively be deemed an abandonment of the claim and it must be declared void. Sheldon Morgen, 47 IBLA 118 (1980); accord, Dwight F. Kennedy, 47 IBLA 132 (1980); John S. Henson, 47 IBLA 12 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

^{1/} A letter in the record dated February 1, 1980, from the Oregon State Office to Lowell Becker acknowledges receipt of 'your new claim filing OR MC 31662.'

ERRATUM

By our decision of June 16, 1980, styled Lowell Becker, Billie Peterson, 48 IBLA 203, this Board affirmed the holding of the Oregon State Office of the Bureau of Land Management that the Saturday 28 placer mining claim must conclusively be deemed abandoned and void because of the failure of the mining claimants to file timely a copy of the location notice for recordation with BLM, as required by 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

The Board's decision notes at 48 IBLA 205 that some uncertainty existed as to subsequent efforts of the claimants to re-file a location notice for the Saturday 28 claim.

BLM now advises that the Saturday 28 claim located on May 21, 1960, was the subject of its decision and the appeal to this Board. However, following BLM's decision, the claimants relocated the claim on January 18, 1980, and timely recorded the location notice memorializing that action. This relocation also named the claim the 'Saturday 28.' In accepting the notice filed for the relocated Saturday 28 claim, BLM assigned it number OR MC 31662, and forwarded the record thereof to this Board, apparently without explanation. In the ensuing confusion the Board assumed that the number OR MC 31662 was applicable to the filing which BLM had rejected, and included a reference to that number in the caption of the decision of June 16, 1980, at 48 IBLA 203.

It appearing that the Board's decision is otherwise correct, now therefore the reference in the decision to the number OR MC 31662 is here deleted, and the decision amended accordingly.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

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